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# BOOK REVIEWS.

CHARLES S. BULKLEY, *Editor-in-Charge.*

LEGAL ESSAYS. By JAMES BRADLEY THAYER. Boston: The Boston Book Co. 1908. pp. xvi, 402.

Every reader of this modest volume will lay it down with regret that its author did not publish more. This regret will be deepened by learning that, at the time of his death, Professor Thayer was actively at work on a second volume on evidence, which was to have been similar in form to the Preliminary Treatise, but "of a more immediately practical character, giving a concise statement of the existing law of evidence"; and that he had planned also to publish a volume on Constitutional Law resembling the Preliminary Treatise on Evidence in its form and general scope. That such publications would have been eagerly welcomed and highly prized by the legal profession cannot be doubted.

The unfortunate meagerness of Professor Thayer's published work is explained by one of his Harvard colleagues in these words: "Mr. Thayer was fastidious, not in judging what others had done, for he was a generous and kindly critic, but in passing upon his own work. To discover or verify a fact which might make his material more complete, to arrange and rearrange that material so that its expression might be more perspicuous, no time or trouble seemed to him too great. But though the pages which he wrote cut no great figure, when measured by the base modern standard of so many thousand words, their quality is high."

The most important essays, in the volume before us, relate to constitutional law; and, as the editor remarks, contain much of the material which would have gone into the proposed treatise on that subject. We may well believe that the first essay—on The Origin and Scope of the American Doctrine of Constitutional Law—would have needed little if any recasting for service as the opening chapter of such a treatise. Certainly, in connection with the valuable notes, made up of extracts from other writings of the author, by the editor of this volume, it presents an admirable view of the peculiarities of our constitutional law.

It is highly probable that many a reader will find himself unable to accept all of the author's doctrines, but every reader will be impressed with the cogency of his reasoning and the general sanity of his judgment. Indeed, a dissenter, if also fair minded, will be apt to rise from the perusal of such an essay as that on Legal Tender, with a keener appreciation of the writer's ability and soberness and fairness than a disciple.

Professor Thayer is not a controversialist, but he never hesitates to express his opinion of what seems to him a legal heresy; nor to defend with vigor his own views, when assailed. His retort is always courteous, and yet its keenness is quite as marked as its urbanity. He never wields the big stick, but an opponent who lays himself open to a rapier thrust is sure to feel its sting. The neatness and dispatch with which he can do up a misguided critic is shown in the essay entitled Law and Logic. It is a fine specimen of his clearness of thought, his accuracy of statement,

his admirable temper and his literary deftness. Here, as always, he makes the law speak the language of the gentleman.

Another essay which will repay repeated perusal is that on The Teaching of English Law at Universities. It is an unanswerable plea for the highest equipment on the part of the teacher, and the most thorough and painstaking study on the part of the pupil. To this end he insists that "our law schools must be endowed as our colleges are endowed. If they are not, then the managers must needs consult the market, and consider what will pay: *they will bid for numbers of students instead of excellence of work.*"

THE AMERICAN CONSTITUTION. By FREDERICK JESUP STIMSON. New York: Charles Scribner's Sons. 1908. pp. 259.

In this small volume we have Professor Stimson's Lowell Institute Lectures, eight in number, delivered in 1907. In these he discusses "The National Powers," "The Rights of the States," and "The Liberties of the People," giving us a careful study of constitutional principles, forms and tendencies in the United States.

In the first three chapters, the author sets forth the great constitutional rights which characterize Anglo-Saxon liberty, and in chapter four their development is traced through English History. The fundamental rights or principles are: (1) government by law as distinguished from personal rule, (2) one law for all, which means the absence of special administrative law for the protection of officials, so common in Europe, and (3) complete liberty of action, subject to penalty after the act, but free from direction before it.

The third of these is stated thus: "The common law speaks only in damages. It has no notion of ordering a freeman to do something against his will." This leads to a study of the Injunction, which is a development from English Chancery jurisdiction,—but along continental rather than Saxon lines. While beneficent in intention, and often useful, it has been abused in this country until it has become the practice of companies, "instead of suing in damages, or using the local police protection, to get an order from the Federal judge addressed to the whole body of their employees, or even to all the world, ordering such people to do or not to do what they wish or what they complain of."

Comparing the English and American systems with each other, the author finds that the latter has made four important additions to the former. First, the written constitution to limit the powers of government and protect the minority. Second, the separation of powers so that the making and administering of law shall not fall into the same hands. Third, the establishment of two governments over the same individuals but with different jurisdictions. Fourth, the creation of a Court with authority to pronounce on the constitutionality and hence the validity of a law; from which it follows that in our system the last word is with the judiciary rather than with the legislature or the executive. "No other country in the world has this principle," and it "is the envy and the marvel of the rest of the civilized world."